

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

NORTH STAR MARINE OPERATORS, INC.

and

Case 18-CA-16147-1

JOHN RADOSEVICH, An Individual

*David M. Biggar*, of Minneapolis, MN, appearing  
for the General Counsel.

*John Radosevich*, of Duluth, MN, appearing  
*pro se*.

*Joseph J. Roby, Jr. and Jessica L. Durbin*  
(*Johnson, Killen & Seiler, P.A.*), of Duluth,  
MN, appearing for the Respondent.

DECISION

Statement of the Case

WILLIAM J. PANNIER III, Administrative Law Judge: I heard this case on March 4 and 5, 2002, in Duluth, Minnesota. On November 20, 2001,<sup>1</sup> the Regional Director for Region 18 of the National Labor Relations Board (the Board) issued a Complaint and Notice of Hearing, based upon an unfair labor practice charge filed on September 11, alleging violations of Sections 8(a)(1) and (3) of the National Labor Relations Act (the Act). All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based upon the entire record, upon the briefs that have been filed, and upon my observation of the demeanor of the witnesses, I make the following findings of fact and conclusions of law.

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Introduction*

This case presents the single issue of an employer's motivation for the acknowledged discharge of one employee in mid-April. The General Counsel alleges that that discharge had actually been motivated by grievances filed by that employee on March 23. The employer counters that that discharge had actually been motivated by repetition of misconduct, indulged in by that employee for a number of years, which eventually led its owner and president to regard that misconduct as no longer tolerable. For the reasons set forth *post*, I conclude that a preponderance of the credible evidence establishes that, in fact, the discharge had actually been motivated by that employee's participation in the grievance process, and to some extent by that employee's opposition to a recently negotiated collective-bargaining contract between

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<sup>1</sup> Unless stated otherwise, all dates occurred during 2001.

the employer and the labor organization representing its employees. The testimony of the employer's owner and president was not credible and, in any event, his written and testimonial complaints to the Union show that it had been grievances and complaints about asserted contract violations which precipitated the discharge decision. Therefore, I conclude that the discharge violated Sections 8(a)(3) and (1) of the Act.

5 The employer, of course, is Respondent, North Star Marine Operators, Inc. At all material times it has been a Minnesota corporation, with an office and place of business in Duluth, engaged in providing tying and untying services to foreign ships or vessels.<sup>2</sup> It has  
10 existed since 1962 when it was established by Richard Amatuzio who has continuously been its one hundred percent owner and its president. Respondent admits that at all material times Amatuzio has been a statutory supervisor and agent of Respondent.

Respondent's business is seasonal. That is, shipping season on Lake Superior seemingly begins on some date during the month of April and concludes on a date in  
15 December. During those shipping seasons since 1962 Respondent has provided tying and untying services for foreign, but not for domestic or Canadian, vessels arriving at the ports of Duluth, Minnesota, and Superior, Wisconsin. In addition, it operates a launch boat used to transport personnel and, sometimes, mail between shore and vessels. One operator and a crew member or safety man constitute the crew of the launch boat.

20 "Not necessarily," Amatuzio testified, would the launch boat be used to meet a ship before it is tied up. "It all depends on the agent when they call," he further testified. As to that last answer, and inasmuch as the owner of one agent—Charles M. Hilleren of Guthrie Hubner, Incorporated—appeared as a witness in support of Respondent's defense, some explanation is  
25 needed of the role of local agents in Respondent's business.

Respondent does not, itself, arrange directly to tie and untie vessels nor, as Amatuzio's above-quoted testimony shows, for operation of the launch boat whenever a particular vessel arrives or departs. Most ships are arriving at Duluth-Superior empty and are there to pick up  
30 cargo, such as grain, rather than to deliver cargo. Whenever, for example, a grain company needs to ship from there, it contacts one of a number of ships' owners—"located around the world," Hilleren testified—and charters a ship. In turn, that ship's owner contracts with a local agent and broker, such as Guthrie Hubner, to husband the ship between Port Huron, Michigan and the ports of Duluth or Superior. That agent is responsible for arranging for pilotage, tugs,  
35 linehandling, ship chandlers to supply ships with goods, and whatever else may be required for arriving and departing ships. "Normally as an agent for the vessel I'm responsible to the master," Hilleren testified, and, "The captain is in their employ and I'm in his employ, yes."

Hilleren estimated that Guthrie Hubner has serviced per year over the last three or four  
40 years "probably between--probably about 125 a year type thing" vessels. For tying and untying vessels, he further testified, Guthrie Hubner has "been working with [Respondent] since probably...the early 60's [sic]. '62, '63, somewhere in that area." It has since used no other

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45 <sup>2</sup> Respondent admits the allegation that, at all material times, it has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, based upon the also admitted penultimate allegations that, in conducting its tying and untying business operations during calendar year 2000, it received gross revenues in excess of \$50,000 both from enterprises who made sales in excess of \$50,000 directly to points outside of the State of Minnesota and, also, from enterprises or shipping companies who purchased goods valued in excess of \$50,000 directly from points located outside of Minnesota.

linehandling firm. In fact, testified Hilleren, "up until about ten years ago there weren't any other line handling services available," but even after some competitors emerged, "We have had a very good relationship with [Respondent] and found no need to--they have been competitive. They have been--we have had a very good working relationship business relationship with" Respondent.

As to the operations for which Respondent is retained by Guthrie Hubner, as stated above the launch boat is used to portage mostly personnel—crew members, inspectors, pilots—between shore and ship. Linehandlers are employees who tie ships arriving at anchorage, for loading ordinarily, and who untie the, usually loaded, ships for departure. Over the course of a shipping season, that involves a considerable amount of tying and untying. As stated in the immediately preceding paragraph, Hilleren estimated that an average of 125 ships was serviced annually by Guthrie Hubner. Amatuzio estimated that one "hundred ships per year, 150 ships" probably "came in." In addition, Amatuzio testified that those ships also needed to be untied and, again, tied after "moving in the harbor going from one slip to another. So it could be two per ship, two ties per ship--or three."

A vessel being brought to anchorage is turning its own propeller(s) for power as it approaches anchorage. Guiding it is a tugboat that has its own prop turning. As the vessel nears anchorage, its crew throws out five or six, possibly seven whenever weather is inclement, heaving lines. Tied to the end of each heaving line is a two- to four-inch circumference mooring line. Once linehandlers on the dock have caught hold of heaving lines, they tug on them until they can take hold of the following, attached mooring lines. Mooring lines have a braided loop where they are attached to the heaving lines. Having caught hold of the mooring lines as they tug on the heaving lines, the linehandlers untie the heaving lines, put the mooring lines' braided loops over speels or bells on the dock, and tighten the mooring lines until their loops are affixed firmly on the speels or bells. Historically, Respondent has used four linehandlers to tie a vessel: two at the bow and two at the stern.

The process is reversed when untying a vessel. The mooring line loop is removed from the speel or bell, the heaving line is reattached to the mooring line, and those lines are pulled aboard the vessel. Because that is a less relatively involved operation than tying, historically Respondent has utilized on two linehandlers, one at the bow and one at the stern, when untying ships.

Amatuzio owns Respondent, as mentioned above. But, he is not some sort of desk jockey or hands-off owner. "I had to work [the docks] to get the business going," he testified, "I had to do the work myself which I did." He has worked during every shipping season since he founded Respondent. To ensure that he would be able to continuously do that, Amatuzio became a member of General Cargo, Grain and Allied Workers, Local 1366 GLDC-ILA, affiliated with the A.F.L.-C.I.O. (Local 1366), then located in Duluth. "So I could work the docks myself," Amatuzio testified, he had joined Local 1366.

At some point Respondent also became party to a collective-bargaining contract with Local 1366. The record is not clear as to when that occurred. The earliest contract offered into evidence is one executed on January 4, 1994, effective by its terms until from January 1, 1993 until December 31, 1996. Certain aspects of that contract were carried forward to succeeding contracts and require description.

First, Article III, Section A provided that, "The employer shall not use less than four (4) men for the mooring or wharfing of a vessel, not less than two (2) men for the unmooring of a vessel," with a third to be used on days of "inclement weather," which had been Respondent's

practice, as described above. Second, Article III, Section F required that “notice of two (2) hours for call out” be given for call-outs between 7:00 a.m. and 10:00 p.m. That provision is an important aspect of April events culminating in the allegedly unlawful discharge. Third, Article III, Section G.6 listed the order of seniority for linehandlers working for Respondent: Amatuzio, himself; Gary Butler; John Radosevich; Tim Rachuy; and, Richard Amatuzio, Jr. Finally, Article III, Section E.2 states, “The Company will not tolerate continuous abusive language, screaming[,] yelling, disrespectful signs or allegations towards the ship crew members. After 1/1/94 This [sic] could result in termination of the employee.” It is undisputed that that final provision had been added to the 1993-1996 contract at the behest of Amatuzio.

As already pointed out, all of those four provisions were essentially carried forward in succeeding collective-bargaining contracts to which Respondent became a party. The most recent of those contracts is effective from March 19, 2001 until December 31, 2005. Added at the bottom of names listed above in Article III, Section G.6 is a sixth name: Edward Montgomery. By the time that contract was executed, Local 1366 had been erased as a result of a merger. On July 1, 2000, three local unions—Locals 2061, 1366 and 1037—were merged into the Union, General Cargo Grain and Allied Workers, Local 1037 GLDC-I.L.A., affiliated with the A.F.L.-C.I.O., a labor organization within the meaning of Section 2(5) of the Act. And it was execution of that contract that initiated the sequence of events leading to the allegedly unlawful discharge.

The alleged discriminatee is John Radosevich, the number three linehandler on the contractual seniority list. Actually, Amatuzio agreed that Radosevich had been working for him even before the latter became an employee of Respondent. “Yes, he did,” Amatuzio eventually responded, when asked whether Radosevich had done “garbage runs for you,” and, “Yes,” he had done that for a number of years, apparently while employed by some other business that Amatuzio had been operating in Duluth.

By the time of his discharge during April, Radosevich had been working for Respondent for approximately 14 years as a linehandler. That is, apparently he had begun working as a linehandler for Respondent during 1987. “I worked mostly on the stern,” he testified, both when tying and untying vessels. As set forth above, while only one linehandler works at the stern when untying ships, two worked at the stern when tying vessels. Thus, when tying, Radosevich was regularly one of those linehandlers. The other was Amatuzio, himself.

When he first appeared as an adverse witness called by the General Counsel, Amatuzio testified that, prior to the 2001 shipping season, “Probably myself and John Radosevich” had been the two linehandlers who had tied or moored the sterns of vessels. Asked, then, if he had tied all ships that came in, Amatuzio became somewhat vague, answering, “It all depended on if I was busy or not.” Later, called as a witness by Respondent, he was asked to “estimate how many times over those fourteen years [of Radosevich’s employment by Respondent] you worked with Mr. Radosevich?” “Probably on every ship,” and “as many ships that came in,” he answered, as well as ones being moved. That testimony is particularly significant, given the fact that the defense for Radosevich’s discharge is that the latter had a history of misconduct toward ships’ crews, coworkers, the agent and Amatuzio, himself. Virtually all of that misconduct supposedly had occurred while ships were being tied. Therefore, Amatuzio had to have been present every time that supposed incidents of misconduct occurred. Yet, it is undisputed that Radosevich had never been actually discharged or, even, disciplined in any way for purported misconduct. Amatuzio knew about all of whatever had occurred. He tolerated it.

Untying during April became a triggering situation in the overall sequence of events leading to Radosevich’s discharge. As mentioned above, only two linehandlers are ordinarily

required to perform it. For the most part, that was not done by Amatuzio. Rather, untying was performed by the numbers two and three linehandlers on the contractual seniority list: Butler and Radosevich. "Right," answered Amatuzio, when asked, "typically, commonly, normally, in the year 2000 the two people who untied the ships were Gary Butler and John Radosevich?"

5 That is not to say that Amatuzio did no untying of vessels. However, there was some dispute over the extent to which he did so. "A couple of unties he would do a year," Radosevich testified. "No. Much more than that," testified Amatuzio, "Probably 10 percent--5 per cent" of the ships untied by Respondent. "Right," he ultimately agreed, "one out of 10 ships that were untied you would do?" Actually, Respondent was in a position to provide a more exact number of vessels untied by Amatuzio. "Yes, I would have records," he answered when asked whether Respondent has "any records that would indicate what percentage of the ships you tied versus somebody else ties," as well as "what percentage you untied versus somebody else untied?" But Respondent did not produce those records. Accordingly, the record is left with testimony that, regardless of the exact percentage of vessels he untied, Amatuzio historically untied a distinct minority of vessels during the shipping seasons.

Even before the 2001-2005 contract had been executed, some of its proposed provisions, as well as provisions from the then-most-recent collective-bargaining contract, were viewed with dissatisfaction by Radosevich and certain other linehandlers employed by Respondent, specifically Rachuy, Montgomery and rarely employed part-timer Rodney Pfeffer. Lest there be any question, Section 7 of the Act protects the right of employees "to review the proposals and counterproposals which had been generated by...negotiations...and, additionally, to ascertain if other members shared their view that there should be a redirection in [their bargaining agent's] strategy," *Operating Engineers Local 400 (Hilde Construction Company)*, 225 NLRB 596, 601 (1976), *affd.* mem. 561 F.2d 1021 (D.C. Cir. 1977). See also, *Helton v. NLRB*, 656 F.2d 883, fn. 58 (D.C. Cir. 1981); *Laborers Union Local No. 324 v. NLRB*, 106 F.3d 918, 921-922 (9th Cir. 1997). Those employees made their feelings known to the Union. And Amatuzio knew that. He testified that he had been aware of those feelings before he had executed the 2001-2005 collective-bargaining contract. Even so, he told Radosevich, according to the latter, "It's a pretty good contract. I think it's a workable contract. We should sign it and get on with the shipping season." In fact, that contract was ratified by a majority of linehandlers in attendance at a ratification meeting. Then it was executed by the Union's president, John C. Reed, on March 19. In turn, that generated grievances, some of which are pointed to by the General Counsel as the basis for the unlawful motivation for Respondent's termination of Radosevich.

#### B. Events of March and April

On March 23 four linehandlers each signed eight identically-worded grievances. Those four linehandlers were Radosevich, Montgomery, Rachuy and Pfeffer. One of the grievances protested demands for dues-payments retroactive to July 2000. Four others protested the circumstances leading to execution of the 2001-2005 contract with Respondent: asserted failure to present it to unit members for inspection; lack of adequate notice to Respondent's linehandlers about January and March union meetings; failure to have a proper quorum at the March meeting when the ratification-election was conducted; and, allowing ratification by a simple majority, rather than by an assertedly required two-thirds majority.

The other three grievances involved union membership matters but, in reality, took dead aim at Respondent, through the Union. One concerned inclusion of Gary Butler "as a rank and file union and bargaining unit member," given that he was dispatching and recording work performed for Respondent, thereby assertedly rendering him a "supervisor of the linehandlers

of” Respondent. The final two grievances pertained to Amatuzio. One protested his “continued inclusion...as a dues paying rank and file member,” given his ownership of Respondent. The other essentially repeated that protest, but added, “It is not proper that an employer also be a member of the linehandlers bargaining unit, yet retain the power of contract negotiations as an employer.”

The actual issue here is not the objective merit of the last two grievances described in the immediately preceding paragraph—whether or not they had actual merit. In fact, the Union eventually rebuffed all eight of the grievances. But, not until after Radosevich had been fired. Instead, the actual issue is how Amatuzio perceived those grievances. For, as the decision-maker for Radosevich’s grievance, it is his state of mind to which analysis is focused. See, e.g., *Belle of Sioux City*, 333 NLRB No. 133 slip op. at 12 (January 31, 2001), and cases cited therein. In that regard, as described in subsection A above, Amatuzio believed that he had to be a member of the Union, “[s]o I could work the docks myself” as a linehandler. As will be seen, his own statements show that Amatuzio genuinely believed that the two grievances pertaining to him endangered his ability to continue working as a linehandler.

During April, the month after the one in which the grievances had been filed, Amatuzio sent four letters to the Union concerning Radosevich. So far as the evidence shows, that had been the very first occasion when he had chosen to correspond with the Union regarding Radosevich. In fact, so far as the evidence shows, April had been the very first occasion when Amatuzio had chosen to correspond with the Union concerning any employee. By letter dated April 13, he informed the Union’s “President & Executive Board” that:

On April 12, 2001 at H.S. I in Superior at approximately 1415 hours at the M.V. “NOGAT” John Radosevich showed up at the dock, questioned me as to what was going on. I told him the ship was loaded and sailing down the lake. He asked why he wasn’t called and I told him that I was exercising my seniority. He then said that I was retaliating for something he did about the contract.

While the crew, Captain and Pilot were looking on at the stern of the ship he called me an asshole and said thats [sic] why nobody likes me in very loud abusive language and threatened me that he was going to file federal charges. I told him that I had to make as much money as possible as there was an attempt to throw me out of the union.

Three points emerge from examination of that letter.

First, so far as the record shows, as of April 13 the only “attempt to throw [Amatuzio] out of the” Union had been the above-described March 23 grievances. There is no evidence of any other activity then in progress that could have culminated in Amatuzio’s exclusion from either union or bargaining unit membership. Related to that, secondly, is the letter’s admission that, in fact, Amatuzio had chosen to exercise his seniority to untie the *Nogat* for no reason other than “to make as much money as possible as there was an attempt to throw me out of the [U]nion.” Of course, in doing that, he automatically excluded Radosevich from that untie. Finally, the letter’s final sentence also evidences Amatuzio’s genuine belief that he might well be ejected from the Union, as a result of the grievances, whatever the eventual disposition made in processing the two grievances aimed at his continued union and unit membership.

As pointed out above, so far as the record discloses, the April 13 letter had been the very first time in Respondent’s almost 40-year history that Amatuzio had corresponded with the Union about an employee. On the following day he did so once more. In a letter dated April 14,

again to the Union's "President & Executive Board," Amatuzio complained:

On Friday, April 13, 2001, John Radosevich was at Cargill B 1 elevator taking pictures of me untieing [sic] the M.V. "PILICA" and then went forward and took pictures of Gary Butler untieing the bow. Roger Jewel, the superintendent, came down the dock and told him to quit taking pictures on the dock.

All else aside, the letter is some indication that Amatuzio had become more concerned with building a paper record—albeit, a self-serving one—against Radosevich, than with actual interference by Radosevich with Respondent's production and discipline. For, there is simply no evidence, and Amatuzio never claimed, that Radosevich's April 13 picture-taking had the least negative effect upon untying the *Pilica*, or upon any other aspect of Respondent's operations.

For Radosevich, the picture-taking had a direct relationship to his protest of the prior day about Amatuzio retaliating because of Radosevich's opposition to the 2001-2005 contract. "I took the pictures because up to 2001 I was one of the untie guys and I felt that I would take pictures showing that Mr. Amatuzio was doing my job," he testified, "In case I ended up-- with the grievances I filed on him if we ended up going to court or anything to show that he was untying my ships." The fact that Superintendent Jewel stopped him turns out to be no evidence of interference with operations on the dock that day. Jewel never appeared as a witness to explain why he had stopped Radosevich from continuing to take pictures, though there is neither evidence nor representation that Jewel was unavailable to testify. No other evidence suggests that Radosevich's picture-taking somehow interfered with operations on the dock that day. At best, the record shows no more than that Jewel was not disposed to allow an unusual activity to continue.

Furthermore, while Butler appeared as a witness for Respondent, he never corroborated the letter's assertion that he, also, had been the object of picture-taking by Radosevich. So far as the testimony shows, Radosevich had confined his April 13 picture-taking to Amatuzio, consistent with his testimony about his reason for having taken pictures at the Cargill B 1 elevator on April 13.

Amatuzio also wrote the Union's "President & Executive Board" about another event that occurred on April 13. Inasmuch as he had chosen to write the Union about the picture-taking of that date on April 14, logically it would seem that he would also have included in that letter, or in another letter of April 14, the other April 13 incident about which he complained to the Union. But, Amatuzio did not do that. Instead, he chose to wait and to send a separate letter to the Union dated April 15, some further indication of an intention to build a paper record against Radosevich by complaining to the Union on three separate days in mid-April.

Surely, it cannot be said that Amatuzio had not had an opportunity to write the Union about the second incident on April 13 simply because that second incident happened later in the evening. After all, his letter about the picture-taking was written on Saturday, April 14. If he had time to write that letter on that Saturday, then surely he had the opportunity on that same day to either include an account of that second incident in that same letter or, alternatively, write a second letter to the Union on that Saturday. Furthermore, the account in that second letter concerns an incident in which, from Amatuzio's own written description, Radosevich had engaged in no misconduct, whatsoever:

On Friday, April 13, at approximately 2100 hours I received a call from John Radosevich stating that he did not have a 2-hour call. I called his home and talked to his wife at approximately 1915 hours for the ship to go into PV elevator at about 2100 hours.

As it turned out the ship came into the berth and was secured by 2245 hours. John was letting the "FEDERAL HUNTER" go at the same dock (PV elevator) and he knew the "BLACK SWAN" would be coming into the same berth after the "FEDERAL HUNTER" cleared the harbor. During our conversation he repeated 2 or 3 times "did you sign a contract, did you sign a contract".

I have tried in every way possible to satisfy this person but find that he is impossible to work with not knowing the next time will he start screaming and yelling again [sic]. I will not except [sic] this man working for me under any condition and therefore he will be terminated as I told him so.

Close scrutiny of the letter reveals several considerations in assessing the legitimacy of Amatuzio's motivation for having written it.

First, from the face of the letter, Amatuzio admits that he had failed to afford Radosevich the contractually-required two hours' notice of the *Black Swan's* arrival at the PV elevator. It was scheduled to arrive at 2100 hours, or 9:00 p.m. The letter admits that Amatuzio had not called Radosevich's home until 1915 hours, or 7:15 p.m. Since the *Black Swan* was arriving before 10:00 p.m. on April 13, the plain fact is that Respondent had not complied with the contract's two-hour notice requirement.

Second, also from the face of the letter, Radosevich had done no more than protest Respondent's failure to give him two hours' notice of the *Black Swan's* arrival. To be sure, in the letter's third paragraph, Amatuzio complains about "not knowing the next time" that Radosevich "will...start screaming and yelling again." Yet, at no point in the first two paragraphs, describing specifically what had occurred in connection with Radosevich's complaint about failure to receive two hours' notice, does Amatuzio describe any "screaming and yelling" on the part of Radosevich. All the letter says is that Radosevich had said that he had not received two-hours' notice, a fact, and "did you sign a contract, did you sign a contract," a reference to the document in which Respondent agreed that it would give such notice.

Third, by having made those remarks to Amatuzio, Radosevich was effectively undertaking a grievance, activity protected by Section 7 of the Act. To be sure, he had not formally filed any grievance as of April 13. But, grievance-filing is not confined to the point at which employees formally initiate the contractually-prescribed disputes resolution procedure. "It is reasonable to expect that an employee's first response to a situation that he believes violates his collective-bargaining agreement will be a protest to his employer. Whether he files a grievance will depend in part on his employer's reaction and in part on the nature of the right at issue." *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822, 836 (1984).

Regardless of any other past incidents involving Radosevich, the simple fact is that Respondent once more employed him for the 2001 shipping season as a linehandler. Whatever may have occurred on April 12 at the *Nogat*, Amatuzio did not choose to fire Radosevich for that incident. Instead, voicing an abstract concern with possible "screaming and yelling" in the future—a concern apparently nonexistent when the shipping season began, but which arose because of Radosevich's complaint about a contract violation—Amatuzio made his discharge decision once Radosevich chose to complain—grieve—about Respondent's failure to give him the full two hours' notice required by the existing collective-bargaining contract. The April 15 letter simply admits of no other conclusion.

By letter to Radosevich dated April 17, Amatuzio gave notice that, "This is to officially

notify you as to the termination of your employment with [Respondent] as of April 16, 2001. On that same date, Amatuzio wrote another letter to the Union's "President & Executive Board," the text of which states:

John Radosevich has disrupted the working conditions of this company which has been running smoothly for the last 35 years. He has in the past irritated and intimidated other linesmen to the point that Gary Butler has refused to finish his job of calling out linesmen.

Gary told me it was nerve racking and at times he could not sleep at night with all the pressure. This is not the way to treat a brother union member.

John has also come into the office and made threatening remarks against our principals, especially Chuch [sic] Hillerin [sic] saying that he would get rid of him on the waterfront so Dan Sydow could get his business.

While on the dock John has been observed screaming at the crew and at points throwing the heaving line back in the water because he refused to take an offshore line. He would go sit in his truck and sulk. This is not the kind of service that the ships would expect to have in the Port of Duluth/Superior. I highly recommend that this man be dismissed totally from the I.L.A. as he cannot control his temper and frustrations.

Of the asserted incidents mentioned in this letter, only Butler's request for relief as dispatcher seemingly occurred during the 2001 shipping season. Yet, even as to that, the testimony reveals that Amatuzio had been exaggerating the events that had led to Butler's request—had been trying to tailor his testimony to place Radosevich in the most unfavorable light possible, thereby fortifying the purported reasons that had led Amatuzio to make his discharge decision.

Butler, it should be remembered, was called as a witness for Respondent, but had not corroborated Amatuzio's assertion that Radosevich had also photographed him (Butler) on April 13. Indeed, there would have been no reason for Radosevich to have done so. Butler ordinarily untied vessels' sterns. So, he was performing no unusual duties on that date, in connection with the *Pilica's* departure. Not only did Butler also not corroborate Amatuzio's testimony regarding the request for relief as dispatcher; Butler effectively contradicted that testimony.

Butler did agree that, when performing dispatching, "sometimes" he had had run-ins with Radosevich. In the course of them, testified Butler, Radosevich would "yell and scream," usually about calls made less than two hours before linehandling was needed. On other occasions, Butler testified, there had been disagreements concerning overtime that Butler had recorded for Radosevich. Yet, as he testified, Butler did not appear to have been so disturbed by those disagreements as Amatuzio attempted to portray both in his April 17 letter and as he testified.

"Oh, sometimes," testified Butler, he had been a target of Radosevich's anger, "but I just kind of just let it go in one ear and out the other." Beyond that, the truly important point, in connection with Butler's request for relief as dispatcher, was that Radosevich had not been the lone linehandler who had become contentious regarding Butler's dispatching.

Butler testified that by the Spring of 2001, "everyone" had been "yelling and screaming" at him in connection with his performance of dispatching duties. "You know," Butler explained, "coming to me with complaints and I just didn't want to handle it any more." At no point did Butler claim that Radosevich's conduct, alone, had been the cause of his decision not to "handle

[dispatching duties] any more.” Nor, for that matter, did Butler ever claim that his request for relief as dispatcher had resulted any more from “yelling and screaming” by Radosevich, than from “yelling and screaming” by other employees. Instead, Butler reaffirmed that “everyone” had been doing it and, as a result, he wanted to stop being Respondent’s dispatcher. In sum, Butler’s testimony mostly contradicted that of Amatuzio, though it did show that Radosevich had yelled and screamed, regarding the events that had led Butler to request relief from dispatching duties. Butler never testified that, at the time of that request, he had blamed Radosevich only for requesting relief. Viewed in its totality, Butler’s testimony showed that, when testifying, Amatuzio had been exaggerating what had occurred. And Amatuzio obviously appreciated that fact.

Testifying for Respondent after Butler had appeared as its witness, Amatuzio, in a sense, launched a mini-attack against Butler. Butler “was intimidated by Mr. Radosevich. He won’t admit--” testified Amatuzio, before being cut off. However, he was not to be deterred. Asked, then, if he had been told that Butler was intimidated by Radosevich, Amatuzio completed his cut-off thought: “He won’t admit to that.” Yet, that explanation makes no sense, in the context of the totality of the evidence.

Amatuzio never explained exactly how Butler could have become “intimidated by Mr. Radosevich.” By the time of the hearing, Butler and Radosevich no longer worked together. So, they did not come into daily contact at the docks, in the course of performing day-to-day work. There is no evidence that Radosevich had ever come to the Duluth-Superior docks after having been fired by Respondent. Moreover, while both live in Duluth, that is hardly a village where all residents come into daily contact with each other. There is no evidence that Butler and Radosevich reside in proximity to each other. There is no evidence that they encounter each other, at all, as they go about their daily nonwork-related activities. Nor, aside from Amatuzio’s generalized purported opinion quoted above, is there the least evidence that Butler somehow felt intimidated by Radosevich as of the dates of the hearing in the instant proceeding. In sum, there is no evidence to support a supposed opinion that, as of the hearing, Butler was “intimidated by Mr. Radosevich.”

In fact, by the end of the hearing, Amatuzio had contradicted his above-described testimony, by giving testimony that at least tended to support that given by Butler. For, Amatuzio eventually testified, “Mr. Butler said to me he couldn’t stand the pressure and take the shit that he was getting from the linesmen,” (underscoring supplied), though he hastily added, “meaning Mr. Radosevich.” Yet, Amatuzio supplied no explanation for that purported conversion of a statement made in the plural into an asserted meaning of the singular. And no such explanation is suggested by the other evidence.

Other inconsistencies in Amatuzio’s assertions about 2001 shipping season, made in his April letters and while testifying, emerged as the hearing progressed. For example, in his April 13 letter Amatuzio stated that “the crew, Captain and Pilot were looking on at the stern of the” *Nogat*, when Radosevich assertedly had “called me an asshole and said thats [sic] why nobody likes me.” The clear—indeed, intended—implication of that testimony was that Amatuzio had been humiliated by Radosevich in front of, and in the hearing of, others “looking on at the stern of the ship”. Yet, with respect to any such implication, and the facts asserted by Amatuzio, the April 13 letter contained an internal contradiction.

In that letter’s first paragraph, Amatuzio states that he had told Radosevich, by the time that the latter had arrived at H.S. 1 and had protested not being called to untie the *Nogat*, that “the ship was loaded and sailing down the lake.” In other words, by that time the *Nogat* was no longer even at the dock. Indeed, Radosevich agreed that, by the time of his exchange with

Amatuzio, "the ship was...going down the lake." As a result, the situation was not merely one concerning distance between dock and deck, nor between dock and bridge, of the *Nogat*. Both vertical and horizontal distance was involved, accompanied by propeller, weather and other ordinary noise on the dock. There simply is no evidence that anyone on the *Nogat* would even likely have heard, by the time Radosevich had arrived, what was being said back on the dock.

In fact, there is some evidence that at least one person aboard ship had not heard what Radosevich had been saying to Amatuzio, nor the latter to the former. Radosevich gave testimony about one individual then aboard ship—the pilot—who obviously had observed Amatuzio and Radosevich back at the dock. Radosevich testified that the pilot later "told me that he was wondering what was going on" back that dock, because he (the pilot) "heard nothing" that Radosevich and Amatuzio were saying. Inasmuch as that pilot was never called as a witness, it cannot be said what had occurred on the dock that had caught his eye on April 12. What can be said with certainty is that there is no evidence whatsoever that anyone on board the *Nogat* had actually heard anything that Radosevich was saying to Amatuzio.

Of course, overheard or not, calling one's boss an "asshole" is ordinarily not conduct calculated to prolong one's employment. In most situations, it would be fair to say that such a remark to an employer displays all the self-preservation instincts of a lemming. Still, from Amatuzio's own testimony, that had not been the first time that he had been the target of name-calling by Radosevich and, in the final analysis, Amatuzio never claimed that his decision to fire Radosevich had occurred following the events of April 12. Instead, it had been the picture-taking and, more particularly, the protest about violating the contractual two-hour call-out requirement that had led to that decision. Yet, the name-calling of April 12 provided a springboard for testimony by Amatuzio that also revealed the unreliability of his testimony, in general.

Initially, Amatuzio was making seemingly every effort to deny that swearing and profanity occurred on the Duluth-Superior docks. Questioned about that subject, when called as an adverse witness at the beginning of the General Counsel's case-in-chief, Amatuzio claimed, "You know what? They don't" swear on those docks. Counsel's reaction to that answer led Amatuzio to expand on it: "No, they don't. I heard women use worse words than longshoremen do." Asked whether he was "saying that longshoremen and the crew out there generally don't swear," Amatuzio responded, "No, they don't. There is very little abusive language on the dock." However, that testimony would later cause problems for Amatuzio on two fronts.

First, other witnesses contradicted Amatuzio's testimony about the lack of profane language and swearing on the docks. "Common practice," testified longshoreman John Chiovitte, a witness called by Respondent. In fact, he further testified that people other than Radosevich had screamed, as well, while working on the docks. Linehandler Ed Montgomery, a witness for the General Counsel, also testified that he and people who worked with him all used "bad language" in the course of working on the docks: "Does a longshoreman swear. I guess does an attorney read books. Yeah, there is constant swearing. Myself included." No witness corroborated Amatuzio's claim that "women use worse words than longshoremen do" on the Duluth-Superior docks.

Second, it did not take long for Amatuzio to contradict his own testimony quoted two paragraphs above. "No, it's not," he testified, the first time, on April 12, that Radosevich had yelled and screamed at him, using bad language in the course of doing so. "This is common talk. This is the way John talks," Amatuzio testified. If so, then seemingly there had been some swearing on the docks, at least by Radosevich. And, in the end, Amatuzio admitted that Radosevich had not been the only one who had done that.

“He is one of the people that does” (underscoring supplied), testified Amatuzio. Following up on that answer, counsel pointed out that Amatuzio had testified previously that “they don’t” swear on the docks. Caught in his own conflicting answers, Amatuzio tried to avoid the contradiction in a fashion similar to his above-described mini-attack on Butler’s failure to corroborate his (Amatuzio’s) earlier testimony. He launched a mini-attack on counsel: “You know, I think you are trying to confuse me. We are playing a little Dick Tracy here.” That was not successful. Amatuzio was again directed to frequency of swearing on the dock. “Not many do,” he answered. “There is [sic] a few of them,” he allowed, then claiming that the “few” were only Radosevich and one other linesman no longer employed by Respondent. He made no mention whatsoever of Montgomery who, as mentioned above, conceded that he had sworn while working on the docks.

In a seeming effort to aid Respondent, Guthrie Hubner, Incorporated’s owner, Charles M. Hilleren, tried to support Amatuzio’s account of what had occurred on April 12. Not long after he began to testify, it became quite apparent that Hilleren had no use for Radosevich and was attempting to support the party with whom his company did business: Respondent. In fact, Amatuzio acknowledged that “the agent told me ‘Get rid of him,’ that he would not put up with this anymore,” seemingly with protests about retaliation for statutorily-protected activity, since “this” was left undefined by either Amatuzio or Hilleren. The latter’s testimony about what had supposedly occurred on April 12 turned out to be an illustration of the general unreliability of Hilleren’s testimony.

According to Hilleren, on that day “Radosevich had confronted Dick [Amatuzio] about something and there was a pretty heated discussion going on and the discussion ended by Mr. Radosevich calling Mr. Amatuzio an asshole or an f’n asshole and kind of walked away.” During a subsequent conversation, testified Hilleren, Amatuzio “said...he was sorry that this had to happen on the dock in front of me but...he was a bit upset at Mr. Radosevich and the stuff has been coming and coming at him for the last three or four years,” and, as a result, Amatuzio “at that time decided that he would more than likely...advise that the employment of Mr. Radosevich with [Respondent] would be ended.” There were a number of problems related to that testimony.

First, there is no evidence whatsoever that Amatuzio had decided to fire Radosevich over the events of April 12. Amatuzio made no such assertion in his April 13 letter to the Union. Obviously, he knew how to make such a reference in a letter to a union. In his April 15 letter, he said flatly that Radosevich will be terminated as I told him so.” But, Amatuzio never claimed that he had “told [Radosevich] so” on April 12, nor before Radosevich took pictures to support his retaliation suspicion and complained about Respondent’s April 13 failure to comply fully with the two-hour contractual call-out requirement.

Second, neither Radosevich nor, more significantly, Amatuzio testified that Hilleren had been present during the April 12 exchange over untying the *Nogat*. There can be no doubt that it was that incident to which Hilleren was referring in his testimony. He was asked specifically if he had been “present on the docks last April for a tying or untying of one of your customer vessels,” to which he answered affirmatively. Next, he was asked if he had been present for “any incident involving Dick Amatuzio and Mr. Radosevich?” The 2001 shipping season had not started until April 9 or 10. Amatuzio complained, by letter to the Union and while testifying, about only a single incident when he had assertedly been called an asshole during that shipping season. Hilleren had to be referring to the April 12 exchange between Radosevich and Amatuzio. But, neither one of them placed Hilleren as having been present to witness whatever had been said between them.

Third, Hilleren gave testimony that was absolutely inconsistent with that of Amatuzio. According to Hilleren's account, "I mean they were busy tying the ship in so to the best of my knowledge I'm not sure exactly what transpired after that. I went up on board the ship after it was tied up." But, the *Nogat* was not being tied. If it had been, there would have been no basis for an exchange about it being tied by Amatuzio, rather than Radosevich. Both of them worked together whenever vessels were being tied. Amatuzio would not have replaced Radosevich at the *Nogat*'s stern if it was being moored. Amatuzio testified that the incident arose from his having untied the *Nogat*.

There is no room for arguing that Hilleren may have misspoken, when testifying "they were busy tying the ship". He repeated that assertion: "I was present on the dock, I forget what the ship was that came in and tied up" (underscoring supplied), and he claimed that Amatuzio had said to Radosevich, "let's just get the ship tied in," and he also testified, "he tied the ship in." Hilleren could hardly have gone "on board the ship" after Respondent's actual work on that occasion had been completed. When that work was completed, according to Amatuzio's April 13 letter, the *Nogat* went "sailing down the lake."

Finally, there was a timing problem raised by Hilleren's testimony regarding the asserted later conversation during which Amatuzio supposedly said that "he would more than likely" end Radosevich's employment with Respondent. According to Hilleren, that conversation had occurred "a week later or ten days later," after the incident that Hilleren supposedly had witnessed on the dock. However, that incident occurred on April 12. A week or ten days later would have been April 19 or 22. Yet, by both those dates Amatuzio had already discharged Radosevich: by verbal statement on April 13, following the latter's protest about the two-hour call-out infraction, and by letters dated April 17. By April 19, certainly by April 22, there would have been no need for Amatuzio to speak prospectively: "had to do something" and "more than likely...advise that the employment of Mr. Radosevich...be ended." As of April 19, those events had already occurred.

It should not be overlooked that Radosevich denied that he had called Amatuzio an asshole on April 12. Given the other evidence, I find that to be one aspect of Radosevich's testimony that seemed less than candid. Even had he done so, however, he had done so in the course of protesting that he was being retaliated against for, at least, having opposed Union-acceptance of the 2001-2005 collective-bargaining contract and, at most, the grievances which he had filed that were aimed at Amatuzio, as described in subsection A above. In fact, as also discussed, the Supreme Court would characterize Radosevich's very protest on April 12 as an integral part of overall grievance-processing: as a protest directly to his employer, the reaction to which will leave the employee to consider whether or not to actually initiate contractual disputes-resolution by filing a grievance. In sum, both the underlying contract-related and grievance-filing of March 23 were activities protected by Section 7 of the Act and so, too, was the protest by Radosevich on April 12. Accordingly, if he actually had called Amatuzio an "asshole," Radosevich had done that in the course of engaging in activity protected by the Act.

Of course, an employee does not enjoy the Act's protection without some limitation. On the other hand, an employee does not necessarily lose the Act's protection because he/she may utter words not ordinarily used in classroom or chambers. See, e.g., *Container Corporation of America*, 244 NLRB 318, 321-322 (1979). There is no evidence that calling Amatuzio an asshole on April 12 had somehow interfered with Respondent's operations nor, given the absence of anyone credibly shown to have been present to hear what was being said, Respondent's ability to discipline employees. In fact, the record shows that it, and similar epithets, had been directed in the past by Radosevich to Amatuzio, without discipline being

imposed by the latter. “This is the way John talks,” conceded Amatuzio, at least at one point. The fact is that, on April 12 Radosevich had been protesting loss of work and loss of resultant income, because of his seemingly genuine belief that he was being retaliated against for activity protected by Section 7 of the Act. So, even had he called Amatuzio an asshole on April 12, Radosevich had not engaged in conduct “indefensible in the context of the grievance involved,”

5 *Hugh H. Wilson Corp. v. NLRB*, 414 F.2d 1345, 1355-1356 (3rd Cir. 1969), cert. denied 397 U.S. 935 (1970). See also, *NLRB v. Thor Power Tool Co.*, 351 F.2d 584, 587 (7th Cir. 1965); *Crown Central Petroleum Corp. v. NLRB*, 430 F.2d 724, 731 (5th Cir. 1970).

### C. Radosevich’s Pre-2001 Shipping Season Conduct

10 Called as Respondent’s last witness, Amatuzio denied specifically that the issue of the two-hour notice contractual-infracton had anything to do with his decision to fire Radosevich. Of course, that denial tends to be refuted by his own statements in his April 15 letter to the Union, as well as by some of his own testimony about that incident and its relation to his

15 discharge decision. Amatuzio further testified that Radosevich’s March 23 grievances “had nothing to do with” the discharge decision. “It was just everything put together,” he claimed.

When he testified as Respondent’s final witness, Amatuzio made the second of his two efforts, the earlier described in Section II, *infra*, to explain why he had made the decision to fire

20 Radosevich:

You, know there is a movie and I don’t recall who acted in the movie where the guy stuck his head out of the window and says “I’ve had enough” and he was yelling and screaming “I’ve had enough”. Well, I’ve had enough too. I’ve just had it up to here. I

25 get just nervous and excited and achy. I go home. I can’t sleep peacefully at night. The guy bothers me. I don’t want to bump into him on the streets. I don’t want to see him. I don’t need this stuff any more. I just don’t need it. You say why did I keep him around for fourteen years. I was stupid to do it. It was my fault I kept him there but I’m not going to keep him any more. I mean what’s done is done and I just will not put up with

30 him any more.

Of course, that long-on-subjective, short-on-objective testimony really provides no explanation whatsoever for Amatuzio’s discharge decision. In general, it does no more than generalize about conduct prior to the 2001 shipping season. Yet, Amatuzio did not refrain from bringing

35 Radosevich back for work during that season. Presumably, had his conduct been so distressing, Radosevich simply could have been excluded from further employment with Respondent and omitted from the seniority list in the 2001-2005 contract, negotiated and executed between the 2000 and 2001 shipping seasons.

Somewhat more precise of an explanation of asserted motivation appears in Amatuzio’s April 17 letter to the Union: making threatening remarks about replacing Hilleren as agent, swearing at vessels’ crews, throwing a heaving line into the water, and sulking in his truck rather than working. In addition, Respondent presented several witnesses, many of whom testified about what a distasteful individual Radosevich had been to work with. In fact, it appeared that

45 Respondent’s defense was essentially an effort to throw so much mud at Radosevich that, it hoped, some might stick as a legitimate defense, to paraphrase something Dan Rather said many years ago in connection with the candidates’ approach to a particular state election. Even had all of those events occurred, the fact remains that Amatuzio recalled Radosevich to work during the 2001 shipping season. Beyond that, when Respondent’s testimony about Radosevich is scrutinized more than facially, and accounts are compared, it quickly becomes obvious that more mud than reality was being thrown at Radosevich.

For example, in his April 17 letter Amatuzio claimed that Radosevich had “come into the office and made threatening remarks against our principals, especially Chuch [sic] Hillerin [sic] saying that he would get rid of him on the waterfront so Dan Sydow could get his business.” Dan Sydow is an agent with Federal Marine Transport, both a competitor of Guthrie Hubner, Incorporated and, also, a competing linehandler to Respondent. Yet, when Amatuzio was called upon to testify with particularity regarding what Radosevich had purportedly said about Hilleren and Sydow, he referred generally to “everything [Radosevich] does he refers it to Dan Sydow,” and to Radosevich’s “com[ing] out and openly mak[ing] remarks to the public about that.” At no point did he testify what “everything” meant. Nor did he describe with particularity how Radosevich somehow purportedly “refers it to Dan Sydow,” given that there is no evidence whatsoever that Radosevich has any contact with shipowners who contract with local agents. Moreover, given Radosevich’s work location on the docks and the type of work that he performs as a linehandler, it is impossible to infer the precise “public” to which he supposedly would have spoken about Hilleren and Guthrie Hubner, Incorporated, much less what he could have said to such a “public” that would be detrimental to Guthrie Hubner and advantageous to Federal Marine Transport.

The only specific instance described by Amatuzio, in connection with the supposed threat by Radosevich to get rid of Guthrie Hubner, was one that Amatuzio placed as having “happened two years ago,” or during the 2000 shipping season. According to Amatuzio, Radosevich had been “mad because Chuck Hilleren bought a new truck and said he was going to put him out of business, yes.” Amatuzio’s wife, Elizabeth—Respondent’s secretary and bookkeeper—testified that, on one “late in the year” occasion, Radosevich had come to Respondent’s office, looking for her husband. She told him that Amatuzio “wasn’t there,” after which, she testified, “he started rambling on about Chuck Hilleren’s new pickup truck—that he was playing games with the linesmen. He wasn’t giving them their proper notice and he wasn’t going to stand for it. He was going to see that something was done.” Now, that testimony set forth in this paragraph presents three flaws for Respondent’s defense.

First, neither Amatuzio nor his wife attributed any express remarks to Radosevich about getting “rid of [Hilleren] on the waterfront so Dan Sydow could get his business.” Neither one of the Amatuzios made any mention of Sydow when describing Radosevich’s purported specific remarks about Hilleren. Nor did either one of them give any testimony about Radosevich threatening some sort of resort to “the public” in some way, to accomplish replacement of Hilleren with Sydow. So far as their testimony shows, Amatuzio had been exaggerating, to shore up his defense, when he claimed that Radosevich had made replacement and resort-to-the public statements about Hilleren.

Second, it was clear that Amatuzio and his wife were referring to the same incident. Their agreement on the “new truck” reference makes that plain. But, she testified that she had told Radosevich, that day, that her husband “wasn’t there” at the office. She never testified that she had been lying to Radosevich when she had told that to him. So, Amatuzio could not have been describing an event about which he possessed firsthand knowledge. Apparently, he was relying on his wife’s report about what Radosevich had said to her. That created a third flaw.

The best that can be said is that Elizabeth Amatuzio was not paying full attention to whatever Radosevich had been saying to her. There is no evidence that Hilleren had ever purchased a new pickup truck. Hilleren never claimed that he had done so. Beyond that, as an objective matter, purchase of a new truck seems an unlikely reason to try to put someone out of business, even had Radosevich possessed some sort of ability to put Guthrie Hubner, Incorporated out of business.

What the evidence does show is that it had been Radosevich who had purchased a new truck. There is evidence of an incident arising following that purchase, in connection with the truck. But, the Hilleren involved was not Charles H.; it was his son Scott, also an agent for Guthrie Hubner, Incorporated. Radosevich acknowledged that there had been a confrontation  
 5 between the two of them. Shorn of histrionics, Radosevich believed that, as he drove in his newly-purchased truck behind Scott Hilleren from one dock to another, the younger Hilleren had driven in a manner that kicked gravel up behind him, on Radosevich's new truck.

According to Scott Hilleren, after they had arrived at their destination dock, Radosevich  
 10 "got up to my face about two inches away from my face and said 'You better not kick rocks up on my truck again or I'm going to kick your f'n ass,'" or, "Don't do it again. You better watch your speed or I'm going to kick you ass," or, "something along those lines." At no point did Scott Hilleren claim that Radosevich had threatened to try putting Guthrie Hubner, Incorporated out of  
 15 business. And at no point did Scott Hilleren testify that Radosevich had said anything about Dan Sydow. While the incident appears facially significant, other evidence concerning it shows that it had not remained as some sort of problem by the time that the 2001 shipping season began.

First, Scott Hilleren placed the incident as having occurred, "I would say '99," two  
 20 shipping seasons before the 2001 one. Second, there is no evidence of any later dispute between Radosevich and Scott Hilleren. Third, Scott Hilleren acknowledged that, upon arriving at the destination dock, Radosevich and the other linehandlers "had tied the ship up" before Radosevich had approached Scott Hilleren about the gravel. Thus, Radosevich had not allowed the driving incident to interfere with complete performance of Radosevich's tying job. Moreover,  
 25 inasmuch as Amatuzio claimed that he had worked with Radosevich on ties "[p]robably on every ship," it seems unlikely that he had been unaware of the incident on the day that it occurred, even if he had not witnessed it. Even if he had not actually witnessed what occurred, finally, it is clear that Amatuzio was made aware of it. Scott Hilleren testified that he had reported it to Amatuzio. But, Hilleren claimed that he could not "honestly remember" Amatuzio's reaction to  
 30 that report. That may not be particularly surprising. The incident was relatively remote by the time that Scott Hilleren testified. Viewed from Amatuzio's perspective, the incident involved a traffic encounter, away from a dock. It had not interfered with the business of mooring the ship at the destination dock. There is no evidence that the incident had actually interfered with any of Respondent's operations.

One other point should be made about the Radosevich-Scott Hilleren encounter during  
 35 1999. For better or worse, statements about kicking someone else's derriere, for one thing or another, have become a not uncommon feature of the modern verbal landscape. Even so, the fact is that such statements usually amount to no more than mere rhetoric, rather than being  
 40 "literal warning of actual intention to follow-through with such an action." *Mercedes Benz of Orland Park*, 333 NLRB No. 127, slip op. at 32 (April 20, 2001). As the event unfolded, Scott Hilleren certainly displayed no concern about actually having his behind kicked by Radosevich. For, "I think I told him to 'f' off or something like that," testified Scott Hilleren. Incidentally, it  
 45 should not escape notice that Scott Hilleren's response was no less devoid of what was sometimes referred to during the hearing as "bad language," than were the words attributed to Radosevich.

In his April 17 letter to the Union, Amatuzio also complained that, "John has been observed...at points throwing the heaving line back in the water because he refused to take an offshore line." Multiple incident of such misconduct were described by Amatuzio: "If they give him an offshore line he screams and yells at them and calls them every goddamn word he can

think of, cussing, and throws the heaving line back in the water and won't take that line off the ship." (Underscoring supplied.) No offense taken by Amatuzio's use of the underscored word as he was testifying. But, his casual use of it, in a setting where he did not have to use it, is some indication that Amatuzio, himself, is not above using "bad language." Beyond that, the real significance regarding his testimony, about Radosevich supposedly throwing heaving lines into the water, is its inherent unbelievability.

As described in subsection A above, whenever heaving lines are being thrown from ship to dock, the propellers of both that vessel and the tug guiding it are operating. Throwing a line into the water risks snarling that line in the propeller of one or the other. It would be a serious safety infraction. It would be a reckless action that would warrant a demand for discharge of whomever did so. And that demand would likely come from the highest port authority. For, Amatuzio testified that, when being moored, "the ship [is] in a real hazardous situation because if they can't get that line out...some damage could be done," and, moreover, Amatuzio never contested Radosevich's testimony about the potential for lines becoming snarled in propellers.

Radosevich denied ever having done that. He did testify about a single incident, he placed it "back in '90--maybe '93, somewhere in there"—when he had refused to take a heaving line despite Amatuzio's specific direction to do so. His refusal, testified Radosevich, had been because the heaving line was coming from the offshore side of the vessel—the side away from the vessel's dock side. In addition to being "hard work" to accept an offshore line, explained Radosevich, "if you let down too much line you can get the line wrapped up in the prop of the tug or the ship," as the ship approaches the dock. No evidence contradicts that possibility. Amatuzio did claim that an offshore line could "go underneath the tug line," but still they would be below water level and, accordingly, be subject to becoming snarled in a propeller. In any event, while he was unwilling to acknowledge that the single incident described by Radosevich had occurred during the early 1990s, Amatuzio did concede that it had occurred "[p]robably a year before" April 17—that is, before the 2001 shipping season.

Once more Hilleren jumped into the fray on Respondent's behalf. He claimed that "there is [ sic] times where [Radosevich] just dropped the line and drives away," seemingly leaving Amatuzio to moor those vessels. At the outset, while that testimony by Hilleren does corroborate that of Amatuzio that there had been multiple instances, it tends to refute Amatuzio's claim that Radosevich had thrown mooring lines into the water. All Hilleren described was Radosevich "dropp[ing] the line," not "throw[ing] the heaving line back in the water," as Amatuzio claimed. Hilleren never described with particularity even one of the multiple incidents he had supposedly observed of that conduct by Radosevich.

In fact, Radosevich acknowledged that he had returned to his truck after refusing to accept the offshore line on the one occasion that he described. He testified that, while still on the dock, he had "kept yelling at," and using "hand signals" to alert the crew to throw an inshore line, instead. Eventually, he testified, he went to his "truck and got...my marine radio, so I could get in contact with the pilot up on the bridge and tell him that they were giving us an offshore line and I wasn't going to take it because somebody is going to get hurt." Given that he had to be working with Radosevich on the vessel's stern that day, it is significant that Amatuzio never disputed that testimony: never testified that Radosevich had not contacted the ship's bridge on his (Radosevich's) marine radio in his truck, rather than merely sit[ting] in his truck and sulk[ing]."

Amatuzio's final complaint in his April 17 letter to the Union was that Radosevich "has been observed screaming at the crew" of vessels from the dock. Hilleren and other witnesses testified that Radosevich yelled and screamed, as well as cursed and swore at, crews, mostly

during the mooring process, similar to what had occurred in the above-described offshore line incident. Now, there can be no question that Amatuzio had been sensitive to abuse of ships' crew members. It had been at his insistence, it is uncontested, that Article III. Section E.2, described in subsection A above, had been inserted in the 1993-1996 contract. That contractual provision plainly states "towards the ship crew members."

Even so, for almost a decade Respondent had never even attempted to discipline—much less, discharge—Radosevich for yelling and screaming, swearing and cursing, at the crew members of vessels being tied and untied. Respondent executed the 2001-2005 collective-bargaining contract before the 2001 shipping season, without any apparent objection to inclusion of Radosevich's name as the number three man on that contract's seniority list. Respondent accepted back Radosevich as one of its linehandlers for the 2001 shipping season. Most significantly, there is absolutely no evidence that, during the brief period of that season before his discharge, Radosevich had yelled, screamed, cursed or sworn at a crew member of any ship that he tied or untied between April 9 and 13.

Unrelated to anything said in any of Amatuzio's April letters to the Union was testimony about other asserted instances of misconduct by Radosevich. For example, Amatuzio described Radosevich as having "physically push[ed] people. In fact, linehandler Timothy L. Rachuy testified that Radosevich had "started to flat palm me right on my chest and bounced me off my partner's car on one occasion." In like vein, Amatuzio's son, Richard Anthony Amatuzio, testified that, when he had cautioned Radosevich about "yelling at people on the deck" of a ship, Radosevich had given the younger Amatuzio a shove, asking as he did so, "what are you going to do about it?" Even so, although the "flat palm" incident with Rachuy had occurred on the dock, it had not resulted from any work-related encounter. Rather, it had resulted from Radosevich's dissatisfaction with then-Union steward Rachuy's failure to have checked into a retirement issue that Radosevich earlier had asked Rachuy to check. And it occurred, Rachuy testified initially, "Probably three years ago," though he later conceded, "I don't remember when it occurred." There is no basis in the record for inferring, much less concluding, that the "flat palm" incident had occurred during the 2001 shipping season nor, even, during the 2000 shipping season.

Even more remote was the above-described incident between Radosevich and Richard Anthony Amatuzio. The latter placed it as having occurred "probably six or seven" years ago. Of equal interest, Richard Anthony Amatuzio testified that when he reported to his father having been shoved, the senior Amatuzio had said only, "Well, you know, something is going to have to be done." But, there is no evidence that Owner and President Amatuzio ever actually did anything in response to that report by his son.

One should not conclude that Amatuzio did not claim that he had never taken disciplinary action against Radosevich, or had never spoken to Radosevich about his conduct prior to the 2001 shipping season. Amatuzio did claim that he had done both. In general terms, no specific dates or other particularization given, he testified, "I tried to talk to him...you couldn't reason with him," and, "I would just tell him to cool it, just...cut it out. There is no reason for this. Let's try to work together and get along on the docks and make this an enjoyable job...as much as we possibly can." Yet, those types of remarks, even if uttered, amount to no more than mere admonishment, as an objective matter. They hardly rise to a level of reprimand or warning of future discipline for repetition of unacceptable conduct or misconduct. In fact, when Amatuzio was asked specifically whether he had ever told Radosevich that would be out of a job should he repeat this or that type of conduct, Amatuzio effectively admitted that he had not done so, by answering merely, "I don't threaten people."

Radosevich testified that there had been occasions when he had been told by Amatuzio, in response to Radosevich's complaints, "if I didn't like it quit," or, "if I didn't like the way things were going don't come back was his answer." However, Radosevich did not construe those statements to be words of discharge. Indeed, they amount to no more than invitations for Radosevich to make his own decision whether or not to separate from employment with Respondent. They do not even indicate that Amatuzio might take action to separate Radosevich from employment with Respondent.

Even so, Amatuzio did testify generally that, "[p]robably two or three time," he had actually fired Radosevich. Yet, he claimed that he could only recall one specific incident of having done so. On that occasion, according to Amatuzio, he had told Butler, "Gary, I'm not going to put up with this again. Don't call this man to work any more," or, "I can't take this any more. I can't take it," and, "Gary don't dispatch this man any more. He is done. I've had it. I just don't want him around any more." The disparity in Amatuzio's descriptions of the words that he had purportedly spoken to Butler arose because one version was given while testifying as an adverse witness and the other was advanced when Amatuzio later appeared as Respondent's witness. During his first appearance Amatuzio placed the purported discharge as having occurred "a year before" seemingly Radosevich's April discharge. During his later appearance, asked "when did this occur?" Amatuzio answered, "Probably 1999."

Disparity in dates and exact words supposedly spoken by Amatuzio are not the crucially significant aspect regarding Amatuzio's claim that he had fired Radosevich before the 2001 shipping season. The crucially significant point is that Butler did not corroborate Amatuzio's descriptions. Butler did describe one incident where words of discharge were uttered by Amatuzio. That had occurred, testified Butler, "maybe five, six years ago [when] he fired him one night tying up a ship." However, Butler did not testify that he had been given any instructions by Amatuzio. Instead, Butler testified that, on that occasion, "John came down yelling and screaming," and finally was told by Amatuzio, "That's it. You are all done," repeating that "two, three times." Clearly, however, Amatuzio did not regard Radosevich as having been actually discharged. Butler testified that Radosevich "just shut up and stayed there I believe and just tied up the ship, and that was more or less the end of it."

Turning to a related subject, Respondent did make efforts to try explaining why, had he truly become so upset over Radosevich's asserted misconduct over a 14-year period, Amatuzio had not earlier fired or, at least, disciplined Radosevich. Son Richard Anthony Amatuzio volunteered that, "My dad, he is just kind of--he is passive sometimes." Well, there were times as he testified that the senior Amatuzio displayed anything but passivity, as his above-quoted "Dick Tracy" retort to counsel illustrates. Wife Elizabeth testified that her husband had "said it was...very difficult for a small company to dismiss an employee. I--he felt that he [Radosevich] maybe would quit down the line." Yet, her husband never corroborated that testimony. He never claimed that he had told his wife that maybe Radosevich would quit. And he never claimed that he had ever harbored the idea that Radosevich might do so.

Nor did Amatuzio claim that he had ever told his wife, or that he believes, that it is "very difficult for a small company to dismiss an employee." To the contrary, as set forth above, he claimed that he had discharged Radosevich, either during the 1999 or 2000 shipping season. When an effort was made to ascertain why Amatuzio had changed his mind, and taken Radosevich back, Amatuzio never claimed that it had been because Respondent was a small company and, thus, would have difficulty making dismissal stick. Instead, he vacillated, retreating into a vague answer that, "Well, I don't know why. I wished I could answer that. I just--I wished I knew."

For his part, Hilleren had a different explanation for Amatuzio's failure to earlier fire Radosevich. After claiming that there had been numerous complaints from ships' personnel and, even, ship owners, Hilleren went on to claim, "Dick comes from the old school and he employs people. He feels a bit of responsibility to them." Well, many who came of age in "the old school" would agree that employers felt greater loyalty to their employees than may be the fact today. But, where an "old school" employer encountered an employee who engaged in  
 5 flagrant misconduct that could endanger the business of that "old school" employer, many would agree that discharge followed without delay. In any event, the closest that Amatuzio came to expressing some sort of sympathy for Radosevich was that he had supposedly told Butler to resume scheduling Radosevich, claimed Amatuzio, "Because I felt sorry for him." Good grief.

## 10 II. DISCUSSION

The reason so much attention has focused on Respondent's motivation evidence in the preceding section is that it is motivation that is the central and crucial focus of analysis where  
 15 there are allegations of discrimination, see, e.g., *McKenzie Engineering Co.*, 326 NLRB 473, 483 (1998), enfd. 182 F.3d 622 (8th Cir. 1999); *Belle of Sioux City*, *supra*, and cases cited therein, within the methodological framework described in the latter case.

Here, the General Counsel has met the burden of showing that Respondent's motive for  
 20 discharging Radosevich had been the latter's activity protected by Section 7 of the Act. As already discussed, Radosevich engaged in statutorily-protected activity when he opposed the Union's agreement to a collective-bargaining contract which, as set forth in Section I.A, *supra*, Amatuzio believed to be "a pretty good contract." Of course, in voicing his opposition to that contract, Radosevich had been participating in the overall collective bargaining process.  
 25 *Operating Engineers Local 400 (Hilde Construction Company)*, *supra*. As such, his opposition to the 2001-2005 contract was activity protected by Section 7 of the Act. So, too, were his filing of grievances on March 23, his April 12 protest to Amatuzio about retaliation in work nonassignment for having opposed the 2001-2005 contract, and his April 13 protest to Amatuzio for failure to comply fully with that contract's two-hour call-out requirement. All of that activity  
 30 was encompassed by the grievance procedure contemplated by Section 7 of the Act. *NLRB v. City Disposal Systems*, *supra*.

The General Counsel has also shown that Respondent had been aware of that activity. Amatuzio was not actually shown the March 23 grievances pertaining to his union and unit  
 35 membership until after he had discharged Radosevich. Yet, he admitted that he had known of Radosevich's opposition to the, in Amatuzio's view, "pretty good" 2001-2005 collective-bargaining contract. He obviously knew about the grievances challenging his continued union and unit membership. In his April 13 letter he acknowledged that he had told Radosevich that,  
 40 "I had to make as much money as possible as there was an attempt to throw me out of the union." There is no evidence of any such effort other than through the grievances filed by Radosevich and three other employees. Obviously, Amatuzio knew about Radosevich's protests of retaliation and failure to comply fully with the contractual two-hour call-out requirement. Those protests had been voiced by Radosevich directly to Amatuzio, on April 12 and on April 13, respectively.

45 The General Counsel also has shown that Amatuzio harbored hostility toward Radosevich because of the latter's statutorily-protected activity. Amatuzio chose to untie the *Nogat* because of his concern about being "throw[n] out of the union" and, in consequence, being unable to earn as much money as continued union and unit membership would allow him to do. In response to Radosevich's protest about becoming a target of retaliation, Amatuzio wrote the first letter that, so far as the evidence shows, he had ever written to the Union,

complaining about Radosevich's April 12 protest. On the following day, Amatuzio wrote a second letter, complaining about Radosevich's benign conduct of photographing Amatuzio as the latter untied the *Pilica*, photographing that Amatuzio had to appreciate was connected to Radosevich's protest of the preceding day, about being retaliated against by being denied work that otherwise would have been assigned to Radosevich. Most significantly, Amatuzio chose to fire Radosevich when the latter protested failure to comply fully with the two-hour call-out requirement set forth in the 2001-2005 collective-bargaining contract. All of these actions by Amatuzio were litigated. Accordingly, it is not improper to take them all into account, in their entirety, in evaluating Respondent's actual motivation. *McKenzie Engineering Co. v. NLRB*, 182 F.3d 622, 626-627 (8th Cir. 1999).

The circumstances of that discharge, in direct response to Radosevich's protest about a contract violation, shows a direct cause-and-effect relationship between the two events. That timing, as well as the close proximity between the discharge and the other statutorily-protected activity that preceded it—Radosevich's opposition to Union agreement to the 2001-2005 collective-bargaining contract, the grievances pertaining to Amatuzio filed on March 23, Radosevich's protest and related picture-taking concerning retaliation for having engaged in statutorily-protected activity—show timing that is a particularly compelling indicium of unlawful motivation. See, *Handicabs, Inc.*, 318 NLRB 890, 897 (1995), *enfd.* 95 F.3d 681 (8th Cir. 1996), *cert. denied* 521 U.S. 1118 (1997), and cases cited therein.

Also a strong indicium of unlawful motivation is Respondent's toleration of Radosevich's conduct, over a 14-year period while it employed him and before while he was hauling trash for Amatuzio, until he chose to engage in statutorily-protected activity toward which Amatuzio harbored animus. To be sure, toleration of employee misconduct does not mean that it "must be tolerated forever," *NLRB v. Eldorado Mfg. Corp.*, 660 F.2d 1207, 1214 (7th Cir. 1981), when repeated. Yet, the fact that Amatuzio agreed to continue including Radosevich on the 2001-2005 contract's seniority list, and continued to employ him during the 2001 shipping season, are indicators that, whatever past actions Radosevich had engaged in, they did not suffice to preclude his continued employment by Respondent. Moreover, it is significant that there is no evidence that from April 9 or 10 through April 13 Radosevich had yelled and screamed, or cursed and sworn, at any ship's crew. Likewise, there is no evidence that Radosevich had thrown any heaving line onto the dock nor, surely, into the water. There is no evidence that Radosevich had made any threatening or, even, adverse remarks pertaining to Hilleren or about Guthrie Hubner, Incorporated. To be sure, he may have called Amatuzio an "asshole" on April 12. But, nothing in the latter's April 13 letter to the Union gives the least indication that Amatuzio was going to fire Radosevich over the latter's April 12 words and conduct. To the contrary, only when Radosevich's picture-taking indicated that he intended to pursue his retaliation complaint, and only after Radosevich complained about Respondent's failure to comply fully with the contract's two-hour call-out requirement, did Amatuzio decide to fire Radosevich.

In sum, the General Counsel has made his required showing that Radosevich's statutorily-protected union activity motivated his April 13—using the date recited in Amatuzio's April 15 letter to the Union, as opposed to the April 17 letters which constituted no more than formalization of that admitted previously-made decision—discharge. To support its burden of showing that Radosevich would have been discharged in any event for legitimate reasons, Respondent presented testimony by witnesses, particularly decision-maker Amatuzio, that appeared, as those witnesses were testifying, to be contrived and lacking in candor. That conclusion, based on the appearance of those witnesses as they testified, is fortified by review of the record of their testimony, as illustrated throughout Section I.B and C, *supra*.

It was further illustrated by Amatuzio's effort to construct legitimate reasons for his discharge decision. As set forth in Section I.C, *supra*, during Respondent's case-in-chief he gave testimony about that decision that, while colorful, constituted more an account of his own supposed subjective feelings, than a recitation of legitimate events that logically would have led an employer to decide to fire an employee. Earlier, when appearing as an adverse witness,

He was asked what had caused him to terminate Radosevich. He answered that one thing had been, "I guess his complaining," but he dodged answering what that exact complaining had been during 2001: "I don't recall what incident it was but there were a few." Of course, Radosevich had complained during 2001 about being retaliated against for statutorily-protected activity and about Respondent's failure to comply fully with the two-hour call-out requirement in the 2001-2005 contract. In the end, Amatuzio conceded that the latter had been a reason for his termination decision: "when he called me at the office about being called fifteen minutes late for a ship." And, then, he admitted that Radosevich's picture-taking, to supply evidence of being denied calls for unties, had also been a discharge reason: "Coming down to the elevators, taking pictures of me untying a ship, intimidate--trying to intimidate me." The, he added, "Coming over to the Farmers Gallery in Superior screaming and yelling about what I was doing there and where was the ship going," in full view of the ship's captain, the pilot and the tug operator, and "calling me an asshole and stupid and that's why everybody in the harbor hates me....Just violent."

Yet, there simply is no evidence that Radosevich had become violent on April 12 when he had protested about retaliation in connection with untying the *Nogat*. As pointed out in Section I.B, *supra*, Radosevich voiced his protest in full view, but by the time he did so the captain and pilot were on a ship already "sailing down the lake" and the tug operator was guiding the *Nogat*, as it sailed. From those facts, there is no basis for concluding that anyone on the ship or on the tug could have heard what Radosevich was saying to Amatuzio. In fact, the pilot later asked Radosevich what had been said. In any event, as already pointed out, Amatuzio never claimed that he had decided to fire Radosevich because of what the latter had said and done on that day. And the record does not admit of any conclusion that Amatuzio had fired Radosevich solely because of the events of April 12. Instead, he fired Radosevich in the immediate wake of the latter's protest about a violation of the collective-bargaining contract.

I do not credit Amatuzio, nor for that matter Hilleren. In consequence, the record is left with a credible showing of unlawful motivation for Radosevich's discharge and a defense of legitimate motivation that is not credible. Viewing the evidence in its totality, I conclude that a preponderance of the credible evidence establishes that Respondent did discharge Radosevich on April 12 because of his union activities and, therefore, that the discharge violated Sections 8(a)(3) and (1) of the Act.

#### Conclusions of Law

North Star Marine Operators, Inc. has committed unfair labor practices affecting commerce by discharging John Radosevich on April 13, 2001, because of his union activities in connection with representation by General Cargo, Grain and Allied Workers, Local 1037 GLDC-I.L.A., affiliated with A.F.L.-C.I.O., in violation of Sections 8(a)(3) and (1) of the Act.

#### Remedy

Having concluded that North Star Marine Operators, Inc. has engaged in an unfair labor practice, I shall recommend that it be ordered to cease and desist therefrom and, further, that it

be ordered to take certain affirmative action to effectuate the policies of the Act. With respect to the latter, it shall be ordered to, within 14 days from the date of this Order, offer John Radosevich full reinstatement to the linehandler position from which he was unlawfully discharged on April 13, 2001, dismissing, if necessary, anyone who may have been hired or assigned to perform his job after that unlawful discharge. If his job no longer exists, he will be offered employment in a substantially equivalent position, without prejudice to his seniority or other rights and privileges which he would have enjoyed had he not been unlawfully discharged.

It also shall be ordered to make John Radosevich whole for any loss of earnings and other benefits he suffered as a result of his unlawful discharge, with backpay to be computed on a quarterly basis, making deductions for interim earnings, *F.W. Woolworth Co.*, 90 NLRB 289 (1950), and with interest to be paid on all amounts owing, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, it shall be ordered to remove from its files, within 14 days from the date of this Order, any reference to the unlawful discharge of John Radosevich and, within 3 days thereafter, notify him in writing that this has been done and that the discharge shall not be used against him in any way.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:<sup>3</sup>

#### ORDER

North Star Marine Operators, Inc., its officers, agents, successors and assigns, shall:

##### 1. Cease and desist from

(a) Discharging or otherwise discriminating against John Radosevich or any other employee for opposing acceptance of a collective-bargaining contract, filing grievances or participating in the grievance process, and protesting retaliation for having engaged in those activities protected by the National Labor Relations Act, in connection with representation by General Cargo, Grain and Allied Workers, Local 1037 GLDC-I.L.A., affiliated with the A.F.L.-C.I.O., or any other labor organization.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Within 14 days from the date of this Order, offer John Radosevich full reinstatement to the linehandlers position from which he was unlawfully discharged on April 13, 2001, or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges which he would have enjoyed had he not been unlawfully discharged.

(b) Make John Radosevich whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge on April 13, 2001, in the manner set forth in the Remedy

<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

section of this decision.

(c) Preserve, and within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amounts of backpay due under the terms of this Order.

(d) Within 14 days from the date of this Order, remove from its files any reference to the discharge of John Radosevich on April 13, 2001, and within 3 days thereafter notify him in writing that this had been done and that his discharge will not be used against him in any way.

(e) Within 14 days after service by the Region, post at its Duluth, Minnesota office and place of business copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice on forms provided by the Regional Director for Region 18, after being signed by its duly authorized representative, shall be posted by North Star Marine Operators, Inc. and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, it has gone out of business or closed its Duluth office and place of business, North Star Marine Operators, Inc. shall duplicate and mail, at its own expense, copies of the notice to all current employees and former employees employed by it at its Duluth office and place of business at any time since March 11, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

Dated: Washington, D.C., September 2, 2002

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WILLIAM J. PANNIER III  
Administrative Law Judge

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<sup>4</sup> If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD".

## APPENDIX

## NOTICE TO EMPLOYEES

5

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

- 10 The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

15

Form, join or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

20

WE WILL NOT discharge or otherwise discriminate against John Radosevich, or any other employee, for choosing to oppose acceptance of a collective-bargaining contract, filing grievances or participating the grievance process, or protesting retaliation for having engaged in those activities which are protected by the National Labor Relations Act, in connection with representation by General Cargo, Grain and Allied Workers, Local 1037 GLDC-I.L.A., affiliated with the A.F.L.-C.I.O., or any other union.

25

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of your rights protected by the National Labor Relations Act.

30

WE WILL, within 14 days from the date of the Order, offer John Radosevich full reinstatement to the linehandler position from which he was discharged on April 13, 2001, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges which he would have enjoyed had we not unlawfully discharged him.

35

WE WILL make John Radosevich whole for any loss of earnings and other benefits resulting from our unlawful discharge of him on April 13, 2001, less any interim earnings, plus interest.

40

WE WILL, within 14 days from the date of the Order, remove from our files any reference to the unlawful discharge of John Radosevich on April 13, 2001, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that his unlawful discharge on that date will not be used against him in any way.

45

\_\_\_\_\_  
NORTH STAR MARINE OPERATORS, INC.

Dated \_\_\_\_\_

By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below.

You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

330 Second Avenue South

Telephone: (612) 348-1757

Towle Building, Suite 790

Hours of Operation:  
8:00 a.m. to 4:30 p.m.

Minneapolis, MN 55401-2221

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office.